

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - September 11, 2007

HOWARD MILLER, J.P.
JOSEPH COVELLO
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2005-10013

DECISION & ORDER

In the Matter of Paul J. Errico, Jr., et al.,
appellants, v Allen Weinstein, et al.,
respondents.

(Index No. 18048/04)

Rosenberg Calica & Birney, LLP, Garden City, N.Y. (Ronald J. Rosenberg and Lesley A. Reardon of counsel), for appellants.

Forchelli, Curto, Schwartz, Mineo, Carlino & Cohn, LLP, Mineola, N.Y. (Donald Jay Schwartz, Lisa A. Perillo, and Anthony J. Sabino of counsel), for respondents Allen Weinstein and Leslie Weinstein.

Joseph J. Ra, Town Attorney, Hempstead, N.Y. (Mario Bove of counsel), for respondents Town of Hempstead and Ronald W. Masters, as Commissioner of Town of Hempstead Department of Conservation & Waterways.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and Daniel J. Chepaitis of counsel), for respondent Erin M. Crotty, as Commissioner of the New York State Department of Environmental Conservation.

In a hybrid proceeding pursuant to CPLR article 78 to review a determination of the Town of Hempstead Department of Conservation & Waterways dated February 19, 2004, in effect, amending a permit so as to allow Allen Weinstein to construct a floating dock, and to review a determination of the New York State Department of Environmental Conservation dated April 26, 2004, granting the application of Allen Weinstein for a tidal wetlands permit to construct the floating

October 2, 2007

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dock, and action, inter alia, to recover damages for trespass and nuisance, the petitioners appeal from a judgment of the Supreme Court, Nassau County (Davis, J.), entered September 13, 2005, which, in effect, denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with one bill of costs to the respondents appearing separately and filing separate briefs.

The Supreme Court correctly dismissed, as time barred, the causes of action seeking annulment of the subject determinations (*see* CPLR 217[1]; *cf.* ECL 25-0404).

The petitioners' remaining contentions have been rendered academic in light of our determination.

MILLER, J.P., COVELLO, CARNI and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court